UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,380	03/30/2004	Michael David Vrbanac	WEYE122621/24380L	8263

28624 7590 02/01/2006

WEYERHAEUSER COMPANY
INTELLECTUAL PROPERTY DEPT., CH 1J27
P.O. BOX 9777
FEDERAL WAY, WA 98063

EXAMINER	
FORTUNA, JOSE A	

ART UNIT	PAPER NUMBER
1731	

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/815,380	VRBANAC ET AL.	
	Examiner	Art Unit	
	José A. Fortuna	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) *12-16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *03/30/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 21, 2005.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wu et al., WO 98/17856.

Regarding claims 1-10, Wu et al. teach a pulp that has been treated with a particular filler and/or a surfactant and refined to knot count within the claimed range, see examples, page 8, lines 3-8 and abstract. Even though Wu et al. do not explicitly teach the fines and accepts content of the pulp this seems to be inherent to their pulp or at least modification of the process to obtain the claimed accepts and fines would have been obvious to one of ordinary skill in the art, since those properties are recognized result effective variables that are/can be optimized to desired value(s). In the event any differences can be shown for the product -by-process claims 1-10, as opposed to the product taught by the reference Wu et al., such differences would have been obvious to one of ordinary skill in the art as routine modification of the product in the absence of a showing unexpected results, see In re Thorpe, 227 USPQ 964 (CAFC 1985)

As the afore mentioned claims are product by process claims, it is deemed that "[A]ny difference imparted by the product by process claims would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicants to establish that their product is patentably distinct..." In re Brown, 173 U.S.P.Q. 685, and In re Fessmann, 180 U.S.P.Q. 324.

Further, "[P]rocess limitations are significant only to the extent that they distinguish the claimed product over the prior art product." In re Luck, 177 U.S.P.Q. 523 (1973).

Alternatively:

6. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al., (cited above) in view of Marsh, US Patent No. 4,253,822, further evidenced by Crowther et al., GB 888,845.

Wu et al. has been explained above. They, however, do not teach the drying of the singulating and drying of the pulp in a jet drier as claimed. However, Marsh teaches a method and device for drying wood pulp by using an air jet. The advantages of using such a method are indicated by Crowther et al., i.e., faster drying as compared to conventional drum process, see page 1, lines 33-40 and fluffing of the fibers is also obtained by way of the rapid evaporation, see Crowther et al., page 2, lines 17-26. Therefore, using Marsh drying technique would have been obvious to one of ordinary skill in the art in order to obtain the advantages discussed above, i.e., faster drying and fluffing and with further advantage of eliminating the fluffing stage(s) of the references. That is with the use of Marsh drying technique the fibers would not need to fluffed before the drying steps, but both the fluffing and the drying would be carried out in the same stage.

As to the use of the pulp and concrete products, it is very well known in the art the use of cellulosic fibers to reinforce concrete/cement products, see for example US Patent Nos. 5,482,550; 5,108,678; 4,905,439; 4,588,443 and 4,047962 to cite just a few,

and therefore, the use of Wu et al. in a concrete product would have been obvious to one of ordinary skill in the art absent a showing of unexpected results.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure in the art of "Pulp products."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José A. Fortuna whose telephone number is 571-272-1188. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

José A. Fortuna
Primary Examiner
Art Unit 1731

JAF